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10/718,361	11/19/2003	James F. Desmond	P02784	9536
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/718,361  
Filing Date: November 19, 2003  
Appellant(s): DESMOND, JAMES F.

MAILED

AUG 03 2007

Group 3700

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George Morgan  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 06/27/2007 appealing from the Office action mailed 03/05/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,918,650	Borden	07/1999
5,285,824	Krstovic	02/1994

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

Claims 25-28, 47, 53, 55, and 57 stand rejected under 35 U.S.C. 102(b) as being anticipated by Borden (U.S. Patent No. 5,918,650).

Borden discloses an adapted element system kit for assisting pouring of a flowable substance from at least one first container comprising at least one first threaded opening to (Fig. 1; via container 22) to at least one second container (Fig. 1; via container 38 and thread 20) having at least one second threaded opening (via 36); comprising at least one adapter cap comprising at least one Yorker tip (via 1<sup>st</sup> mating piece 12); wherein the at least one adapter cap is structured and arranged to connect to the at least one first threaded opening of the at least one first container (Fig. 1; via adapter 12 connected to threaded opening 20); at least one receiving adapter (Fig. 1; via 2<sup>nd</sup> mating piece 14) comprising at least one access structured and arranged to flowably connect with the at least one Yorker tip of the at least one adapter cap (Fig. 1; via 14 connected with the Yorker tip 12); wherein the at least one receiving adapter comprises at least one threaded port structured and arranged to connect with the at least one second threaded opening of the at least one second container (Fig. 1; via 14 connected to threaded opening 36); the at least one second container (via 38); wherein the at least one receiving adapter is structured and arranged so that the flowable substance may be transferred through the adapter cap connected to the at least one receiving adapter directly from the at least one second container (Fig. 1; via flowable substance transferred through 12 to the 14); wherein the at least one second

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container (38) comprises at least one flexible squeeze tube (note that bottle 38 is capable of being flexible squeeze tube as it is made of plastic as disclosed in column 1, lines 14 and 15).

Regarding claims 25 and 55: further comprising at least one o-ring structured and arranged to assist in providing a seal between the at least one receiving adapter cap and the at least one second threaded opening of the at least one second container (Fig. 1; via ribs 30 and 50).

Regarding claim 26: wherein the at least one second container comprises at least one spout (Fig. 1; via portions threaded portion).

Regarding claims 27 and 28: wherein the at least one spout comprises at least one non-spill valve and lanyard, see for example (Fig. 1).

Regarding claim 53: wherein the at least one second container is smaller than the at least one first container (Fig. 1). Note that it is inherent Borden's system is capable of working with second container being smaller than the first container.

Regarding claim 57: the at least one second container comprises at least one empty flexible squeeze tube body portion (via bottle 38 is inherently is squeezable) having at least one first end and at least one second end (it is inherent that such bottle will have first and second ends); wherein the at least one empty flexible squeeze tube body portion is new and unused for containment (inherent before the use the container is new and containment); wherein the at least one first end comprises a reclosable access system wherein the reclosable access system when closed seals such at least one first open end (via by capping the spout of the bottle); and wherein the at least one second end comprises a permanent "linear" tube type seal closure (via the bottom portion of the bottle).

***Claim Rejections - 35 USC § 103***

Claims 16-24, 30-32, 54, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Borden (U.S. Patent No. 5,918,650).

Borden does not disclose the receiving adapter element comprises a plurality of receiving adapter elements; second container comprises a plurality of second containers; nor a plurality of squeeze tubes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Borden's system by having a plurality of receiving adapter elements; second container comprises a plurality of second containers; and a plurality of squeeze tubes, in order to duplicate each part for extra use and/or replacing any damaged part by the customer, since it has been held that mere duplication of the essential working parts of a device/part involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 23: Borden does not disclose a travel-bag structured and arranged to hold and portably transport the plurality of second containers and the plurality of receiving adapter elements. However, the examiner takes an official notice that such travel bag to container human's needs is known, old, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Borden's system, by having a travel bag to container and hold the containers and adapters, as a matter of engineering design choice, in order to make it convenient carrying the product around.

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Regarding claims 19-22: Borden does not disclose plunger syringe comprises catheter syringe with a capacity of about sixty cubic centimeter nor a flexible tube is between about one-eighth inch diameter and about one half inch diameter plastic tubing. However, as applicant did not specifically claim/refer to the use of such syringe along with the adapter element system, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Borden's system by adding syringe to the kit if needed, in order to measure and control the amount of the transfer liquid.

Regarding claim 30: Borden does not disclose that the second container is bag with bottom folded gusset. However, the examiner takes an official notice that such type of bag with bottom folded gusset is old, available, and known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Borden's second container, by having a bag with bottom folded gusset, as a matter of engineering design choice, in order to make it convenient carrying the product around after transferring the liquid to the second bag.

Regarding claim 31: it is inherent that Borden's system will disclose a set of instructions to advice customers with the best way of using the system.

Regarding claims 54 and 61: Borden does not disclose that the at least one flexible squeeze tube (38) is structured and arranged so that it can be folded substantially flat to expel air from within such flexible squeeze tube. However, the examiner takes an official notice that such flexible squeeze tube being structured and arranged so that it can be folded to expel air from within such flexible squeeze tube is old, available, and known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Borden's second container, by having a flexible squeeze tube been structured and arranged so that it can be folded substantially flat to expel air from within such flexible squeeze tube, as a matter of engineering design choice, in order to make it convenient carrying the product around after transferring the liquid to the second bag.

***Claim Rejections - 35 USC § 103***

Claims 16-28, 30-32, 47, 53-55, 57, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Borden (U.S. Patent No. 5,918,650) in view of Krstovic (U.S. Patent No. 5,285,824).

Borden discloses an adapted element system kit for assisting pouring of a flowable substance from at least one first container comprising at least one first threaded opening to (Fig. 1; via container 22) to at least one second container (Fig. 1; via container 38 and thread 20) having at least one second threaded opening (via 36); comprising at least one adapter cap comprising at least one Yorker tip (via 1<sup>st</sup> mating piece 12); wherein the at least one adapter cap is structured and arranged to connect to the at least one first threaded opening of the at least one first container (Fig. 1; via adapter 12 connected to threaded opening 20); at least one receiving adapter (Fig. 1; via 2<sup>nd</sup> mating piece 14) comprising at least one access structured and arranged to flowably connect with the at least one Yorker tip of the at least one adapter cap (Fig. 1; via 14 connected with the Yorker tip 12); wherein the at least one receiving adapter comprises at least one threaded port structured and arranged to connect with the at least one second threaded opening of the at least one second container (Fig. 1; via 14 connected to threaded opening 36); the at least one second container (via 38); wherein the at least one receiving adapter is structured



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and arranged so that the flowable substance may be transferred through the adapter cap connected to the at least one receiving adapter directly from the at least one second container (Fig. 1; via flowable substance transferred through 12 to the 14).

Borden does not disclose that the at least one second container (38) comprises at least one flexible squeeze tube. However, Krstovic discloses similar adapter element system kit with using second container being flexible squeeze tube, see for example (Figs. 1 and 2; via the flexible plastic bag D).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Borden's second container 38 by the use of flexible plastic container, as suggested by Krstovic, in order to make it easier transfer the interior of the container by squeezing.

Regarding claims 25 and 55: Borden discloses that at least one o-ring structured and arranged to assist in providing a seal between the at least one receiving adapter cap and the at least one second threaded opening of the at least one second container (Fig. 1; via ribs 30 and 50).

Regarding claim 26: Borden discloses that at least one second container comprises at least one spout (Fig. 1; via portions threaded portion).

Regarding claims 27 and 28: Borden discloses that at least one spout comprises at least one non-spill valve and lanyard, see for example (Fig. 1).

Regarding claim 53: Borden discloses that at least one second container is smaller than the at least one first container (Fig. 1). Note that it is inherent Borden's system is capable of working with second container being smaller than the first container.

Regarding claim 57: Borden discloses that the at least one second container comprises at least one empty flexible squeeze tube body portion (via bottle 38 is inherently is squeezable) having at least one first end and at least one second end (it is inherent that such bottle will have first and second ends); wherein the at least one empty flexible squeeze tube body portion is new and unused for containment (inherent before the use the container is new and containment); wherein the at least one first end comprises a reclosable access system wherein the reclosable access system when closed seals such at least one first open end (via by capping the spout of the bottle); and wherein the at least one second end comprises a permanent "linear" tube type seal closure (via the bottom portion of the bottle).

Claims 16-24, 30-32, 54, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Borden (U.S. Patent No. 5,918,650).

Borden nor Krstovic disclose the receiving adapter element comprises a plurality of receiving adapter elements; second container comprises a plurality of second containers; nor a plurality of squeeze tubes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Borden in view of Kstovic's system by having a plurality of receiving adapter elements; second container comprises a plurality of second containers; and a plurality of squeeze tubes, in order to duplicate each part for extra use and/or replacing any damaged part by the customer, since it has been held that mere duplication of the essential working parts of a device/part involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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Regarding claim 23: Borden in view of Krstovic do not disclose a travel-bag structured and arranged to hold and portably transport the plurality of second containers and the plurality of receiving adapter elements. However, the examiner takes an official notice that such travel bag to container human's needs is known, old, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Borden in view of Krstovic's system, by having a travel bag to container and hold the containers and adapters, as a matter of engineering design choice, in order to make it convenient carrying the product around.

Regarding claims 19-22: Borden in view of Krstovic do not disclose plunger syringe comprises catheter syringe with a capacity of about sixty cubic centimeter nor a flexible tube is between about one-eighth inch diameter and about one half inch diameter plastic tubing. However, as applicant did not specifically claim/refer to the use of such syringe along with the adapter element system, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Borden in view of Krstovic's system by adding syringe to the kit if needed, in order to measure and control the amount of the transfer liquid.

Regarding claim 30: Borden in view of Krstovic do not disclose that the second container is bag with bottom folded gusset. However, the examiner takes an official notice that such type of bag with bottom folded gusset is old, available, and known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Borden as modified by Krstovic's second container, by having a bag with bottom folded gusset, as a matter of engineering design choice, in order to make it convenient carrying the product around after transferring the liquid to the second bag.

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Regarding claim 31: it is inherent that Borden's system will disclose a set of instructions to advice customers with the best way of using the system.

Regarding claims 54 and 61: Borden in view of Krstovic do not disclose that the at least one flexible squeeze tube (38) is structured and arranged so that it can be folded substantially flat to expel air from within such flexible squeeze tube. However, the examiner takes an official notice that such flexible squeeze tube being structured and arranged so that it can be folded to expel air from within such flexible squeeze tube is old, available, and known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Borden in view of Krstovic's second container, by having a flexible squeeze tube been structured and arranged so that it can be folded substantially flat to expel air from within such flexible squeeze tube, as a matter of engineering design choice, in order to make it convenient carrying the product around after transferring the liquid to the second bag.

#### **(10) Response to Argument**

**A. Examiner interpretation of the independent claim**

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claims interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re *Am. Acad. of Sci. Tech Ctr.*, 367 F. 3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

**B. The rejection of claim 47 under 35 U.S.C. 102(b) is proper and should be affirmed.**

Appellant first argues on page 11, that Borden does not disclose each and every element of claim 47. Appellant argue that Bordent reference does not disclose at least one flexible squeeze-tube.

Borden as disclose in the rejection, above anticipates the second container via 38, which made of plastic as been described in column 1, lines 14 and 15, which make it capable of being squeezable as obviously there are many plastic squeezable containers out there in the market. Note that the claimed "flexible squeeze-tube" is more to functional language not structural.

Borden clearly anticipates, or in the alternative inherently discloses each and every element of the independent claim 47. Appellant arguments of lacking the teaching of the claimed "flexible squeeze-tube" is inappropriate and irrelevant to an anticipation rejection under the 102(b). The rejection should be affirmed.

**C. The rejection of claim 47 under 35 U.S.C. 103(a) is proper and should be affirmed.**

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Appellant argues on page 21 that Krstovic's reference does not disclose the claimed "flexible squeeze-tube" container as Krstovic lacks a hollow, cylindrical body, and a rigid bottle is not squeezable.

Appellant is aware that there are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (fed. Cir. 1998). See also MPEP 2143.01.

In this instance, Borden discloses the invention as claimed including the use of a second tube container via 38. Krstovic was chosen to show appellant that it is obvious to provide a flexible squeezable container, while the tube container was provided by Borden.

Appellant has not overcome the prima facie burden of obviousness as the examiner has provided sufficient motivation to reject the claim under Borden in view of Krastovi. The 103(a) rejection of claim 57 should be affirmed.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

ST.

**SAMEH H. TAWFIK  
PRIMARY EXAMINER**



Conferees:

Rinaldi Rada



Boyer Ashley